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U.S. Department of Justice

*United States Attorney
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May 12, 2015

MEMO ENDORSED

OK

Colleen McMahon 5/13/15

BY ECF

The Honorable Colleen McMahon
United States District Judge
United States Courthouse, 500 Pearl Street
New York, NY 10007

Re: *U.S. ex rel. Kester v. Novartis Pharmaceuticals Corp.*, 11 Civ. 8196 (CM) (JCF)

Dear Judge McMahon:

This Office represents plaintiff the United States in the above-referenced civil fraud action. Having conferred extensively with counsel for Novartis and for the other plaintiffs in this action, we write respectfully to propose a set of interim discovery deadlines, as agreed upon by the parties. The proposed interim deadlines would affect neither the June 26 deadline for submitting a final joint pre-trial order for the Exjade/Myfortic part of this case nor the November 2, 2015 trial date.

On April 6, and following the March 27th discovery conference, the Court issued an Order (*i*) setting November 2, 2015 as the date for the trial of plaintiffs' Myfortic and Exjade claims and (*ii*) directing the parties to submit the final joint pre-trial (the "JPTO") for that trial on June 26, 2015. The Order did not address the interim deadlines for completing fact and expert discovery.

Since April 6, the parties – the United States, the Litigating States, the Relator and Novartis¹ – have worked diligently to schedule and complete fact discovery depositions and prepare expert reports, and we also have conferred extensively to agree on a timeline for completing fact and expert discovery such that the parties will be able to submit the JPTO on June 26, 2015. Based on those discussions, the parties have agreed upon the following interim deadlines:

- May 20, 2015: date on which the parties shall exchange the identities and subject matters for the expert witnesses they expect to call at trial;
- June 5, 2015: deadline to complete depositions of all fact witnesses relevant to Rule 26 expert reports and disclosures;
- June 12, 2015: deadline to complete depositions of all fact witnesses not relevant to Rule 26 expert reports and disclosures and to complete all fact discovery;

¹ As the Court is aware, the United States and Relator also resolved their claims against former co-defendant Accredo, and the States are working actively with Accredo to resolve the state claims against Accredo.

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- June 19, 2015: date on which the parties shall exchange Rule 26 expert reports and disclosures. Further, to the extent that any party believes that one or more rebuttal expert reports are appropriate under Rule 26(a)(2)(D)(ii), such reports shall be exchanged no later than July 14, 2015; and
- July 31, 2015: deadline to complete depositions of all experts, including rebuttal experts, unless otherwise ordered by the Court.

As proposed, these deadlines will not affect the June 26, 2015 date for submission of the JTPO because the parties do not expect that expert discovery will result in changes to the JPTO.

We respectfully request that the Court adopt these proposed interim deadlines to ensure the completion of discovery in an orderly manner. We thank the Court for its consideration of this update. We will be glad to provide any further information regarding these proposed interim deadlines.

Respectfully,

PREET BHARARA
United States Attorney

By: _____ /s/ _____

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